

DISTRESS REPLEVIN AND EJECTMENT ACT OF 1867⁽¹⁾ (QUEENSLAND, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act to consolidate and amend the Laws relating to Distress Replevin and Ejectment.

* * * * *

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows:—

Preamble repealed by No. 3 of 1914, s. 2 and First Schedule.

INTERPRETATION.

1. The words and expressions hereinafter mentioned which in their ordinary signification have a more confined or different meaning shall in the first thirty-one sections of this Act except where the nature of the provision or the context of the Act shall exclude such construction be interpreted as follows that is to say—

Meaning of words in the Act. Imp. 3 & 4 Wm. IV. c. 27, s. 1.

the word "land" shall extend to messuages and all other corporeal hereditaments whatsoever and also to any share estate or interest in them or any of them

"Land."

(1) *The Distress Replevin and Ejectment Act of 1867* of Queensland in its application to the Territory of Papua comprises the original *The Distress Replevin and Ejectment Act of 1867* of Queensland, referred to in Part I of the following Table, as amended by the Ordinance of the Territory of Papua referred to in Part II of the following Table:—

TABLE.

PART I.—ACT OF THE STATE OF QUEENSLAND.

| Citation of Act. | Ordinance by which adopted. | Date on which adoption took effect. |
|--|---|--|
| <i>The Distress Replevin and Ejectment Act of 1867</i> (31 Vic. No. 16) ^(a) | <i>The Courts and Laws Adopting Ordinance (Amended) of 1889</i> (No. 6 of 1889) | 23.11.1889 (Supplement to British N.G. Govt. Gaz. of 23.11.1889) |

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act, 1905*.

PART II.—ORDINANCE OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

| Short title, number and year. | Date of reservation by Lieut.-Gov. | Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz. | Date on which came into operation. |
|--|------------------------------------|--|---|
| <i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914) | 14.8.1913 | 4.2.1914 | 4.2.1914 (<i>Papua Govt. Gaz.</i> of 4.2.1914) |

LAND—

whether the same shall be a freehold or chattel interest and whether freehold or held according to any other tenure and

"Rent."

the word "rent" shall extend to all services and suits for which a distress may be made and to all annuities and periodical sums of money charged upon or payable out of any land and upon any demise lease or contract whatsoever or otherwise and

Person through whom another claims.

the person through whom another person is said to claim shall mean any person by through or under or by the act of whom the person so claiming became entitled to the estate or interest claimed as heir issue in tail tenant by the courtesy of England tenant in dower successor special or general occupant executor administrator legatee husband assignee appointee devisee or otherwise and also any person who was entitled to an estate or interest to which the person so claiming or some person through whom he claims became entitled as lord by escheat and

"Person."

the word "person" shall extend to a body politic corporate or collegiate and to a class of creditors or other persons as well as an individual and

Australia and the adjacent islands not to be deemed beyond seas.

no part of Australia nor any island adjacent thereto (being part of the dominions of Her Majesty) shall be deemed to be beyond seas within the meaning of this Act.

RIGHTS OF ENTRY DISTRESS OR ACTION.

No descent cast warranty to bar a right of entry &c. Imp. 3 & 4 Wm. IV. c. 27, s. 39.

2. No descent cast discontinuance or warranty shall toll or defeat any right of entry or action for the recovery of land.

No right to be preserved by continual claim. Imp. *Ib.* s. 11.

3. No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

Receipt of rent to be deemed receipt of profits. Imp. *Ib.* s. 35.

4. The receipt of the rent payable by any tenant from year to year or other lessee shall as against such lessee or any person claiming under him (but subject to the lease) be deemed to be the receipt of the profits of the land for the purposes of this Act.

At the end of the period of limitation the right of the party out of possession to be extinguished. Imp. *Ib.* s. 34.

5. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any writ or action or suit the right and title of such person to the land or rent for the recovery whereof such entry distress action or suit respectively might have been made or brought within such period shall be extinguished.

LIMITATION OF ACTIONS AND DISTRESSES.

6. No person shall make an entry or distress or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims or if such right shall not have accrued to any person through whom he claims then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same.

No land or rent to be recovered but within twenty years after the right of action accrued to the claimant or some person whose estate he claims.
Imp. 3 & 4 Wm. IV. c. 27, s. 2.

7. Provided always that if at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy coverture idiocy lunacy unsoundness of mind or absence beyond seas then such person or the person claiming through him may notwithstanding the period of twenty years hereinbefore limited shall have expired make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability or shall have died (which shall have first happened).

Persons under disability of infancy lunacy coverture or beyond seas and their representatives to be allowed ten years from the termination of their disability or death.
Imp. *Ib.* s. 16.

8. Provided nevertheless that no entry distress or action shall be made or brought by any person who at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued shall be under any of the disabilities hereinbefore mentioned or by any person claiming through him but within forty years next after the time at which such right shall have first accrued although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years or although the term of ten years from the time at which he shall have ceased to be under any such disability or have died shall not have expired.

But no action &c. shall be brought &c. beyond forty years after the right of action accrued.
Imp. *Ib.* s. 17.

9. Provided always that when any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued and shall depart this life without having ceased to be under any such disability no time to make an entry or distress or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued or the said period of ten years next after the time at which such person shall have died shall be allowed by reason of any disability of any other person.

No further time to be allowed for a succession of disabilities.
Imp. *Ib.* ss. 18, 19.

LAND—

No lands or rents to be recovered by ecclesiastical eleemosynary corporations sole but within two incumbencies and six years or sixty years.

Imp. 3 & 4 Wm. IV. c. 27, s. 29.

Q. 27 Vic. No. 8, s. 7.

Q. 28 Vic. No. 24, ss. 4 and 12.

10. Provided always that it shall be lawful for any corporation sole to make an entry or distress or to bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole or of his predecessor to make such entry or distress or bring such action or suit shall first have accrued that is to say the period during which two persons in succession shall have held the office in respect whereof such land or rent shall be claimed and six years after a third person shall have been appointed thereto if the times of such two incumbencies and such term of six years taken together shall amount to the full period of sixty years and if such times taken together shall not amount to the full period of sixty years then during such further number of years in addition to such six years as will with the time of the holding of such two persons and such six years make up the full period of sixty years and no such entry distress action or suit shall be made or brought at any time beyond the determination of such period.

When the right shall be deemed to have accrued. Imp. 1b. s. 3.

ACCRUAL OF RIGHT.

11. In the construction of this Act the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned that is to say—

In the case of an estate in possession.

when the person claiming such land or rent or some person through whom he claims shall in respect of the estate or interest claimed have been in possession or in receipt of the profits of such land or in receipt of such rent and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits or rent were or was so received and

On dispossession.

On abatement or death.

when the person claiming such land or rents shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt then such right shall be deemed to have first accrued at the time of such death and

On alienation.

when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted appointed or otherwise assured by any instrument (other than a will) to him or some person through whom he claims by a person being in respect of the same

Distress Replevin and Ejectment Act of 1867 (Queensland, adopted).

estate or interest in the possession or receipt of the profits of the land or in the receipt of the rent and no person entitled under such instrument shall have been in such possession or receipt then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument and

when the estate or interest claimed shall have been an estate or interest in reversion or remainder or other future estate or interest and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession and

In case of future estates.

when the person claiming such land or rent or the person through whom he claims shall have become entitled by reason of any forfeiture or breach of condition then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

In case of forfeiture or breach of condition.

12. Provided always that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder and the land or rent shall not have been recovered by virtue of such right the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession as if no such forfeiture or breach of condition had happened.

Where advantage of forfeiture is not taken by remainderman he shall have a new right when his estate comes into possession. Imp. 3 & 4 Wm. IV. c. 27, s. 4.

13. Provided also that a right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued in respect of an estate or interest in reversion at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held or the profits thereof or such rent shall have been received notwithstanding the person claiming such land or some person through whom he claims shall at any time previously to the creation of the estate or estates which shall have determined have been in possession or receipt of the profits of such land or in receipt of such rent.

Reversioner to have a new right. Imp. 1b. s. 5.

An administrator to claim as if he obtained the estate without interval after death of deceased.
Imp. 3 & 4 Wm. IV. c. 27, s. 6.

14. For the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

In the case of a tenant at will the right shall be deemed to have accrued at the end of one year.
Imp. 1b. s. 7.

15. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant at will the right of the person entitled subject thereto or of the person through whom he claims to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy at which time such tenancy shall be deemed to have determined.

Provided always that no mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of this clause to his mortgagee or trustee.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent.
Imp. 1b. s. 8.

16. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant from year to year or other period without any lease in writing the right of the person entitled subject thereto or of the person through whom he claims to make an entry or distress or to bring an action to recover such land or rent shall be deemed to have first accrued at the determination of the first of such years or other periods or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

Where rent amounting to twenty shillings reserved by a lease in writing shall have been wrongfully received right to accrue on first wrongful receipt and no right to accrue on the determination of the lease.
Imp. 1b. s. 9.

17. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent by virtue of a lease in writing by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto the right of the person entitled to such land or rent subject to such lease or of the person through whom he claims to make an entry or distress or to bring an action after the determination of such lease shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

POSSESSION.

18. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

A mere entry not to be deemed possession.

Imp. 3 & 4 Wm. IV. c. 27, s. 10.

19. When any one or more of several persons entitled to any land or rent as coparceners joint tenants or tenants in common shall have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefit or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

Possession of one coparcener &c. not to be the possession of the others.

Imp. *Ib.* s. 12.

20. When a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land or to the receipt of any rent shall enter into the possession or receipt thereof such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

Possession of a younger brother not to be the possession of the heir.

Imp. *Ib.* s. 13.

21. Provided always that when any acknowledgement of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land or in receipt of such rent then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed according to the meaning of this Act to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same and the right of such last-mentioned person or any person claiming through him to make any entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment or the last of such acknowledgments if more than one was given.

Acknowledgment in writing given to the person entitled or his agent to be equivalent to possession or receipt of rent.

Imp. *Ib.* s. 14.

FUTURE ESTATES.

22. When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited which shall be applicable in such case and such person shall at any time during the said period have been entitled to any other estate interest right or possibility in reversion remainder or otherwise in or to the same land or rent no entry distress or action shall be made or brought by such person or any person claiming through

When the right to an estate in possession is barred the right of the same person to future estates shall also be barred.

Imp. *Ib.* s. 20.

him to recover such land or rent in respect of such other estate interest right or possibility unless in the meantime such land or rent shall have been recovered by some person entitled to an estate interest or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

ESTATES TAIL.

Where tenant in tail is barred remaindermen whom he might have barred shall not recover.

Imp. 3 & 4 Wm. IV. c. 27, s. 21.

23. When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited which shall be applicable in such case no such entry distress or action shall be made or brought by any person claiming any estate interest or right which such tenant in tail might lawfully have barred.

Possession adverse to a tenant in tail shall run on against the remaindermen whom he might have barred.

Imp. 17. s. 22.

24. When a tenant in tail of any land or rent entitled to recover the same shall have died before the expiration of the period hereinbefore limited which shall be applicable in such case for making an entry or distress or bringing an action to recover such land or rent no person claiming any estate interest or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which if such tenant in tail had so long continued to live he might have made such entry or distress or brought such action.

Where there shall have been possession under an assurance by a tenant in tail which shall not bar the remainders they shall be barred at the end of twenty years after the time when the assurance if then executed would have barred them.

Imp. 17. s. 23.

25. When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail and any person shall by virtue of such assurance at the time of the execution thereof or at any time afterwards be in possession or receipt of the profits of such land or in the receipt of such rent and the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue to be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed would without the consent of any other person have operated to bar such estate or estates as aforesaid then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate interest or right to take effect after or in defeasance of such estate tail.

LIMITATION OF SUITS.

26. No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate interest or right in or to the same as he shall claim therein in equity.

No suit in equity to be brought after the time when the plaintiff if entitled at law might have brought an action.

Imp. 3 & 4 Wm. IV. c. 27, s. 24.

27. Provided always that when any land or rent shall be vested in a trustee upon any express trust the right of the cestui que trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover such land or rent shall be deemed to have first accrued according to the meaning of this Act at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

In cases of express trust the right shall not be deemed to have accrued until a conveyance to a purchaser.

Imp. 1b. s. 25.

28. In every case of a concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered

In cases of fraud no time shall run whilst the fraud remains concealed.

Imp. 1b. s. 26.

Provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents or for setting aside any conveyance of such lands or rents on account of fraud against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

29. Provided always that nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.

Imp. 1b. s. 27.

MORTGAGES.

30. When a mortgagee shall have obtained the possession, or receipt of the profits of any land or the receipt of any rent comprised in his mortgage the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession or from the last written acknowledgment.

Imp. 1b. s. 28.

been given to the mortgagor or some person claiming his estate or to the agent of such mortgagor or person in writing signed by the mortgagee or the person claiming through him and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment or the last of such acknowledgments if more than one was given and when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors such acknowledgment if given to any of such mortgagors or persons or his or their agent shall be as effectual as if the same had been given to all such mortgagors or persons but where there shall be more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees such acknowledgment signed by one or more of such mortgagees or persons shall be effectual only as against the party or parties signing as aforesaid and the person or persons claiming any part of the mortgage money or land or rent by from or under him or them and any person or persons entitled to any estate or estates interest or interests to take effect after or in defeasance of his or their estate or estates interest or interests and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment with interest of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Mortgagees within the definition in section 1 may bring actions to recover land within twenty years after last payment of principal or interest.

Imp. 7 Wm. IV. and 1 Vic. c. 28.

31. It shall and may be lawful for any person entitled to or claiming under any mortgage of land being land within the definition contained in the first section of this Act to make an entry or bring an action at law or suit in equity to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued anything herein notwithstanding.

EXTENSION OF RIGHT OF DISTRESS AND ACTION.

Rent in arrear upon a lease for life &c. expired may be distrained for after the determination of the lease.

Imp. 8 Anne c. 14, s. 6.

32. It shall and may be lawful for any person or persons having any rent in arrear or due upon any lease for life or lives or for years or at will ended or determined to distrain for such arrears

after the determination of the said respective leases in the same manner as they might have done if such lease or leases had not been ended or determined.

33. Provided that such distress be made within the space of six calendar months after the determination of such lease and during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

Distress to be within six months after the end of the lease and during the landlord's title and tenant's possession.

Imp. 8 Anne c. 14, s. 7.

34. It shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or at will for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done in his lifetime and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined

Executors of lessors may distrain.

Imp. 3 & 4 Wm. IV. c. 42, ss. 37 and 38.

Provided that such distress be made within six calendar months after the determination of such term or lease and during the continuance of the possession of the tenant from whom such arrears became due and that all provisions in force by law relating to distresses for rent shall be applicable to every distress so made.

35. If any man which now hath or hereafter shall have in the right of his wife any estate in fee simple fee tail or for term of life of or in any rents or fee farms and the same rents or fee farms now be or hereafter shall be due behind and unpaid in the said wife's life then the said husband after the death of his said wife his executors and administrators shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same his executors or administrators and also the said husband after the death of his said wife may distrain for the said arrearages in like manner and form as he might have done if his said wife had been then living and make avowry upon his matter as is aforesaid.

The husband's remedy for rent due in the right and in the life of his wife.

Imp. 32 Hen. VIII. c. 37, s. 3.

36. If any person which now have or hereafter shall have any rents or fee farms for term of life or lives of any other person and the said rent or fee farm now be or hereafter shall be due and unpaid in the life of such person for whose life the estate of the said rent or fee farm did depend or continue and the said person do die then he unto whom the said rent or fee farm was due in form aforesaid his executors or administrators shall and may have an action of debt against the tenant in demesne that ought to have paid the same when it was first due his executors and administrators and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee farms were issuing

The remedy for a rent the estate whereof dependeth upon another's life being dead.

Imp. 1b. s. 4.

and payable in such like manner and form as he ought or might have done if such person by whose death the aforesaid estate in the said rents and fee farms was determined and expired had been in full life and was not dead and the avowry for the taking of the same distress to be made in manner and form aforesaid.

Method of recovering seck rents &c.
Imp. 4 Geo. II.
c. 28, s. 5.

37. Every person bodies politic and corporate shall and may have the like remedy by distress and by impounding and selling the same in cases of rents seck rents of assize and chief rents which have been or shall be hereafter created as in the case of rent reserved upon lease any law or usage to the contrary notwithstanding.

Tenants holding over after their notice for quitting to pay double rent.
Imp. 11 Geo. II.
c. 19, s. 18.

38. In case any tenant shall give notice of his intention to quit the premises by him holden at a time mentioned in such notice and shall not accordingly deliver up the possession thereof at the time in such notice contained then the said tenant his executors or administrators shall from thenceforward pay to the landlord or lessor double the rent or sum which he should otherwise have paid to be levied sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied sued for or recovered and such double rent or sum shall continue to be paid during all the time such tenant shall continue in possession as aforesaid.

APPORTIONMENT.

All rents annuities and other payments coming due at fixed periods to be apportioned.
Imp. 4 & 5 Wm.
IV. c. 22, s. 2.

39. From and after the commencement of this Act all rents service reserved on any lease by a tenant in fee or for any life interest or by any lease granted under any power (and which leases shall have been granted after the commencement of this Act) and all rents charge and other rents annuities pensions dividends and all other payments of every description made payable or coming due at fixed periods under any instrument that shall be executed after the commencement of this Act or (being a will or testamentary instrument) that shall come into operation after the commencement of this Act shall be apportioned so and in such manner that on the death of any person interested in any such rents annuities pensions dividends or other payments as aforesaid or in the estate fund or office from or in respect of which the same shall be issuing or derived or on the determination by any other means whatsoever of the interest of any such person he or she and his or her executors administrators or assigns shall be entitled to a proportion of such rents annuities pensions dividends and other payments according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be) including the day of the death of such person or of the determination of his or her interest all just allowances and deductions in respect of charges on such rents annuities pensions

Subject to all just deductions.

dividends and other payments being made and every such person his or her executors administrators and assigns shall have such and the same remedies at law and in equity for recovering such apportioned parts of the said rents annuities pensions dividends and other payments when the entire portion of which such apportioned parts shall form part shall become due and payable and not before as he she or they would have had for recovering and obtaining such entire rents annuities pensions dividends and other payments if entitled thereto but so that persons liable to pay rents reserved by any lease or demise and the lands tenements and hereditaments comprised therein shall not be resorted to for such apportioned parts specifically as aforesaid but the entire rents of which such portions shall form a part shall be received and recovered by the person or persons who if this Act had not passed would have been entitled to such entire rents and such portions shall be recoverable from such person or persons by the parties entitled to the same under this Act in any action or suit at law or in equity

Remedies for obtaining the apportioned parts.

Provided always that the provisions in this section contained shall not apply to any case in which it shall be expressly stipulated that no apportionment shall take place or to annual sums made payable in policies of assurance of any description.

Not to apply in certain cases.

RENT CHARGES.

40. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

Release of part of land charged not to be an extinguishment. Imp. 22 & 23 Vic. c. 35, s. 10.

PRIVILEGED PERSONS AND GOODS.

41. All writs and processes that shall at any time hereafter be sued forth or prosecuted whereby the person of any ambassador or other public minister of any foreign prince or state authorized and received as such by Her Majesty her heirs or successors or the domestic or domestic servant of any such ambassador or other public minister may be arrested or imprisoned or his or their goods or chattels may be distrained seized or attached shall be deemed and adjudged to be utterly null and void to all intents constructions and purposes whatsoever.

Processes against any public minister or his servants to be adjudged void. Imp. 7 Anne c. 12, s. 3.

42. No distress shall be made on the goods of any casual visitor in any house nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Visitors' and lodgers' goods not to be seized for rent. Cf. Imp. 34 & 35 Vic. c. 79, ss. 1-3.

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YEAR'S RENT.

No goods shall be taken in execution &c. unless the party before removal of the goods &c. pay the landlord the rent due.

Imp. 8 Anne c. 14, s. 1.

43. No goods or chattels whatsoever lying or being in or upon any messuage lands or tenements which are or shall be leased for life or lives term of years at will or otherwise shall be liable to be taken by virtue of an execution on any pretence whatsoever unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premises by virtue of such execution or extent pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking of such goods or chattels by virtue of such execution

Provided that it amount to no more than one year's rent.

Provided the said arrears of rent do not amount to more than one year's rent and in case the said arrears shall exceed one year's rent then the said party at whose suit such execution is sued out paying the said landlord or his bailiff one year's rent may proceed to execute his judgment as he might have done before the making of this Act and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money but this section shall not affect section ninety-nine of "*The District Courts Act of 1867.*"⁽²⁾

The sheriff &c. to levy the rent as well as the execution money.

Growing crops seized and sold under execution to be liable for accruing rent.

Imp. 14 & 15 Vic. c. 25, s. 2.

44. In case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer by virtue of any writ of *fiery facias* or other writ of execution such crops so long as the same shall remain on the farms or lands shall in default of sufficient distresses of the goods and chattels of the tenant be liable to the rent which may accrue and become due to the landlord after any such seizure and sale and to the remedies by distress for recovery of such rent and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by any such sheriff or other officer.

WARRANT OF DISTRESS COPIES AND INVENTORY.

No landlord to distrain except personally or by bailiff authorized by written warrant. Schedule I.

45. No person to whom any rent shall be due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorized by warrant under his hand or under the hand of his attorney duly constituted such warrant to be in the form or to the effect of the schedule hereunto annexed number one

(2) *The District Courts Act of 1867* of Queensland has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua. However, by Rule 131 of the *Rules of Civil Procedure*, printed on p. 617, the practice and procedure of the District Courts of Queensland as regulated, *inter alia*, by *The District Courts Act of 1867* of Queensland were adopted. Rule 131 of the *Rules of Civil Procedure* was superseded by Rule 3 of the *Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors*, printed on p. 669, which adopted the practice and procedure of the District Courts of Queensland as regulated *inter alia* by *The District Courts Act of 1891* of Queensland.

Distress Replevin and Ejection Act of 1867 (Queensland, adopted).

Provided always that whenever the person signing such warrant shall be unable to write his name his signature shall be attested by a justice of the peace an attorney at law or a clerk of petty sessions.

46. Every person making any such distress as the agent or bailiff of another shall first procure from such person two copies of the beforementioned warrant both of which shall be signed as aforesaid and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained or to some person for him resident at the place where the said distress shall be made and in case there shall be no person at such place with whom such copy can be left as aforesaid then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Bailiff to procure warrant in duplicate and give one copy to person distrained on.

47. Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of the schedule hereunto number two of the goods distrained which inventory shall be dated on the day of such distress and shall be signed by the person making the same and shall be thereupon delivered to the tenant or owner of the goods so distrained or to some person for him resident at the place where the said distress shall be made and in case there shall be no person at such place with whom such inventory can be left as aforesaid then such inventory shall be posted on some conspicuous part of the premises on which the distress is made and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Person distraining to forthwith make out and deliver inventory. Schedule II.

CHARGES OF DISTRESS.

48. Where any distress shall be made by the person to whom the rent shall be due or by any bailiff or agent as aforesaid the charges in the section next following mentioned and no other shall be made in respect thereof.

Charges of distress defined.

49. The costs of levy where made by an agent or bailiff under the authority of a warrant to distrain shall be according to the following scale—

Costs of levy.

| | £ | s. | d. |
|--|---|----|----|
| Where the sum distrained for shall be more than two and less than ten pounds | 0 | 5 | 0 |
| Where such sum shall be ten and less than fifty pounds | 0 | 10 | 0 |
| Where such sum shall be fifty pounds or upwards | 1 | 0 | 0 |
| Man in possession per diem | 0 | 4 | 0 |
| And the charges of the Auctioneer or the bailiff conducting the sale shall not exceed two and a half per cent. | | | |
| And the charge for advertisements shall be the money paid for their insertion if such advertisements be required by the person whose goods are distrained. | | | |

Imp. 57 Geo. III. c. 93, s. 1.

DISTRAINABLE GOODS.

Corn loose &c.
may be detained
and sold.

Imp. 2 Wm. &
Mary Sess. 1, c.
5, s. 3.

50. It shall and may be lawful to and for any person or persons having rent arrear and due upon any such demise lease or contract as aforesaid to seize and secure any sheaves or cocks of corn or corn loose or in the straw or hay lying or being in any barn or granary or upon any hovel stack or rick or otherwise upon any part of the land or ground charged with such rent and to lock up or detain the same in the place where the same shall be found for or in the nature of a distress until the same shall be replevied upon such security to be given as hereinafter provided and in default of replevying the same as aforesaid within the time hereinafter provided to sell the same so as nevertheless such corn grain or hay so distrained as aforesaid be not removed by the person or persons distraining to the damage of the owner thereof out of the place where the same shall be found and seized but be kept there (as impounded) until the same shall be replevied or sold in default of replevying the same within the time hereinafter provided.

Landlord may
distrain stock or
cattle on the
premises.

Imp. 11 Geo. II.
c. 19, s. 8.

51. It shall and may be lawful for every lessor or landlord or his steward bailiff receiver or other person empowered by him to take and seize as a distress for arrears of rent any cattle or stock of their respective tenant feeding or depasturing upon any common appurtenant or any ways belonging to all or any part of the premises demised or holden and also to take and seize all sorts of corn and grass hops roots fruits pulse or other product whatsoever which shall be growing on any part of the estates so demised or holden as a distress for arrears of rent and the same to cut gather make cure carry and lay up when ripe in the barns or other proper place on the premises so demised or holden and in case there shall be no barn or proper place on the premises so demised or holden then in any other barn or proper place which such lessor or landlord shall hire or otherwise procure for that purpose and as near as may be to the premises and in convenient time to sell or otherwise dispose of the same towards satisfaction of the rent for which such distress shall have been taken and of the charges of such distress and sale in the same manner as other goods and chattels may be seized distrained and disposed of.

Parties
impounding
cattle to provide
food.

Imp. 5 & 6 Wm.
IV. c. 59, s. 4.

52. Every person who shall impound or confine or cause to be impounded or confined any horse ass or other cattle or animal in any common pound open pound or close pound or in any inclosed place shall and he is hereby required to find provide and supply such horse ass and other cattle or animal so impounded or confined daily with good and sufficient food and nourishment for so long a time as such horse ass or other cattle or animal shall remain and continue so impounded or confined as aforesaid and every such person who shall so find provide and supply any such horse ass or other cattle or animal with such daily food and nourishment as

aforesaid shall and may and he and they are hereby authorized and empowered to recover of and from the owner or owners of such cattle or animal not exceeding double the full value of the food and nourishment so supplied to such cattle or animal as aforesaid by proceeding before a justice of the peace within whose jurisdiction such cattle or animal shall have been so impounded and supplied with food as aforesaid in like manner as any forfeiture or any damage or injury may be recovered under and by virtue of any of the powers or authorities in any Act in that behalf contained and which value of the food and nourishment so to be supplied as aforesaid such justice is hereby fully authorized and empowered to ascertain determine and enforce as aforesaid And every person who shall have so supplied such food and nourishment as aforesaid shall be at liberty if he shall so think fit instead of proceeding for the recovery of the value thereof as last aforesaid after the expiration of seven clear days from the time of impounding the same to sell any such horse ass or other cattle or animal openly at any public market (after having given three days' public printed notice thereof) for the most money that can then be got for the same and to apply the produce in discharge of the value of such food and nourishment so supplied as aforesaid and the expenses of and attending such sale rendering the overplus (if any) to the owner of such cattle or animal.

53. In case any horse ass or other animal shall at any time so remain impounded or confined as aforesaid without sufficient daily food or nourishment more than twenty-four hours it shall and may be lawful to and for any person or persons whomsoever from time to time and as often as shall be necessary to enter into and upon any such common pound open pound or close pound or other inclosed place in which any such cattle or animal shall be so impounded or confined and to supply such cattle or animal with such good and sufficient food and nourishment during so long a time as such cattle or animal shall so remain and continue impounded or confined as aforesaid without being liable to any action of trespass or other proceeding by any person or persons whomsoever for or by any reason of such entry or entries for the purposes aforesaid.

Person may enter pounds &c.

Imp. 5 & 6 Wm. IV. c. 59, s. 5.

54. Notice of the place where the goods and chattels so distrained shall be lodged or deposited shall within the space of one week after the lodging or depositing thereof in such place be given to such lessee or tenant or left at the last place of his abode and if after any distress for arrears of rent so taken of corn grass hops roots fruits pulse or other product which shall be growing as aforesaid and at any time before the same shall be ripe and cut cured or gathered the tenant or lessee his executors administrators or assigns shall pay or cause to be paid to the lessor or landlord for

Tenant to have notice of the place where the distress is lodged.

Imp. 11 Geo. II. c. 19, s. 9.

Distress of corn &c. to cease if rent be paid before it be cut.

whom such distress shall be taken or to the steward or other person usually employed to receive the rent of such lessor or landlord the whole rent which shall be then in arrear together with the full costs and charges of making such distress and which shall have been occasioned thereby then and upon such payment or lawful tender thereof actually made whereby the end of such distress will be fully answered the same and every part thereof shall cease and the corn grass hops roots fruits pulse or other product so distrained shall be delivered up to the lessee or tenant his executors administrators or assigns.

If any lessee &c. shall fraudulently carry off goods and the lessor &c. may within thirty days after seize such goods &c. and sell the same as if they had been distrained.

Imp. 8 Anne c. 14, s. 2.

Imp. 11 Geo. II. c. 19, s. 1.

55. In case any tenant or lessee for life or lives term of years at will sufferance or otherwise of any messuages lands tenements or hereditaments upon the demise or holding whereof any rents are or shall be reserved due or made payable shall fraudulently or clandestinely convey or carry off from such premises his goods or chattels with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved due or made payable as aforesaid it shall and may be lawful to and for such lessor or landlord or any persons by him for that purpose lawfully empowered within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of rent and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such premises for such arrears of rent any law custom or usage to the contrary in anywise notwithstanding.

Provide that such lessor &c. shall not seize any goods &c. which shall be *bonâ fide* sold before.

Imp. 8 Anne c. 14, s. 3.

Imp. 11 Geo. II. c. 19, s. 2.

56. Provided that no lessor or landlord shall take or seize any such goods or chattels as a distress for the same which shall be sold *bonâ fide* and for a valuable consideration before such seizure made to any person not privy to such fraud as aforesaid anything herein contained to the contrary notwithstanding.

Landlord may break open houses.

Imp. 11 Geo. II. c. 19, s. 7.

57. When any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant lessee or his servant agent or other person aiding or assisting therein shall be put placed or kept in any house barn stable outhouse yard close or place locked up fastened or otherwise secured so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent it shall and may be lawful for the landlord lessor his steward bailiff receiver or other person empowered to take and seize as a distress for rent such goods and chattels (first calling to his assistance a peace officer of the district or place where the same shall be suspected to be concealed who is hereby required to aid and assist therein and in case of a dwelling-house oath being also

first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the daytime to break open and enter into such house barn stable outhouse yard close and place and to take and seize such goods and chattels for the said arrears of rent as he might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

SALE.

58. Where any goods or chattels shall be distrained for any rent and the tenant or owner of the goods so distrained shall not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law then in such case after the expiration of the said five days the person distraining shall and may cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer or by a sheriff's bailiff or a bailiff of some court of petty sessions or small debts court for the best price that can be gotten for the same towards satisfaction of the said rent and the charges of the said distress and sale and the overplus if any shall be forthwith handed over to the said tenant or owner and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand

Goods distrained for rent may be sold after the expiration of five days.

Imp. 2 Wm. & Mary Sess. 1, c. 5, s. 2.

Provided always that nothing herein contained as to the time of sale shall apply to any corn grass hops roots fruits pulse or other product whatsoever which shall be growing at the time of the same being seized as a distress.

Not to apply to corn grass hops &c. growing at time of seizure.

59. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Owner of distrained goods may direct order of sale.

60. It shall be lawful for any person lawfully taking any distress for rent to impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress and to sell and dispose of the same upon the premises and it shall be lawful for any person or persons whatsoever after the expiration of the five days hereinbefore mentioned to come and go to and from such place or part of the said premises where any distress for rent shall be impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof and if any pound breach or rescous shall

Distress may be secured and sold on premises.

Imp. 11 Geo. II. c. 19, s. 10.

Treble damages for pound breach.
Imp. 2 Wm. & Mary Sess. 1, c. 5, s. 4.

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be made of any goods and chattels distrained for rent the person or persons aggrieved thereby shall in a special action on the case for the wrong thereby sustained recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound breach any or either of them or against the owner of the goods distrained in case the same be afterwards found to have come to his use or possession.

No appraisement necessary in distress for rent.

61. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof.

UNLAWFUL DISTRESS.

Double damages and costs against unlawful distrainer.

62. In case any such distress and sale as aforesaid shall be made by virtue or color of this Act for rent pretended to be arrear and due where in truth no rent is arrear or due to the person distraining or to him in whose name or right such distress shall be taken as aforesaid then the owner of such goods or chattels distrained and sold as aforesaid his executors or administrators shall and may by action of trespass or upon the case to be brought against the person so distraining his executors or administrators recover double of the value of the goods or chattels so distrained and sold together with full costs of suit.

Penalty for distraining &c. contrary to law.

63. If any person shall knowingly and wilfully distrain for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate or shall neglect or refuse to deliver one of such duplicates to the tenant or owner as hereinbefore directed or if any person distraining for rent shall neglect or refuse to make out and deliver or post up such inventory as aforesaid or shall charge more for any distress or sale than is authorized by this Act or shall refuse to give such account in writing of any sale as hereinbefore provided every person so offending shall on conviction be liable to a penalty not exceeding fifty pounds to be recovered in a summary way by the party aggrieved before any two justices of the peace.

Distresses for rent not unlawful &c. for any irregularity therein.

Imp. 11 Geo. II. c. 19, s. 19.

64. When any distress shall be made for any kind of rent justly due and any irregularity or unlawful act shall be afterwards done by the party distraining or by his her or their agents the distress itself shall not be therefore deemed to be unlawful nor the party making it be deemed a trespasser *ab initio* but the party aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he or they may have sustained thereby and no more in an action of trespass or on the case at the election of the plaintiff provided always that when the plaintiff shall recover in such action he shall be paid his full costs of suit and have all the like remedies for the same as in other cases of costs.

THE PREROGATIVE.

65. Nothing in this Act contained shall extend or be construed to extend to let hinder or prejudice Her Majesty her heirs or successors in the levying recovering or seizing any debts fines penalties or forfeitures that are or shall be due payable or answerable to Her Majesty her heirs or successors but that it shall and may be lawful for Her Majesty her heirs and successors to levy recover and seize such debts fines penalties and forfeitures in the same manner as if this Act had never been made anything in this Act contained to the contrary thereof in anywise notwithstanding.

This Act shall not hinder the Queen &c. to levy any debts fines &c. due to the Crown.
Imp. 8 Anne c. 14, s. 8.

66. From and after the commencement of this Act all the rules regulations clauses provisions penalties matters and things in this Act contained shall extend and be construed to extend and shall be applied and put in execution so far as the same are applicable and capable of being put in execution with respect to any distress or levy which shall be made for any land tax or any other rates taxes impositions or assessments whatever in all cases where the sum demanded and due for or in respect of such rates taxes assessments or impositions shall not exceed the sum of twenty pounds and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds and such costs and charges and no other shall be taken and payable as the costs and charges of the levy and disposition of such distresses and all such proceedings shall and may be had and taken against any and every person transgressing the regulations of this Act in the levying or distraining for any such taxes rates impositions or assessments and all such persons shall be liable to and shall incur such and the like penalties as by this Act are directed required and imposed with respect to persons making any distress for rent contrary to the directions of this Act and in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this Act such order shall be expressed to be made upon a complaint for the breach of this Act.

Provisions of last section extended to other distresses.
Imp. 7 & 8 Geo. IV. c. 17, s. 1.

REPLEVIN.

67. The sheriff or his deputy by him specially appointed for that purpose shall have power to grant replevin in all cases in which a sheriff in England has power to grant the same and every person who shall apply to make replevin shall enter a plaint in replevin in the form hereinafter given or to be fixed by rules of court as hereinafter provided in the office of the said sheriff and upon such security being given by bond as hereinafter mentioned a precept in replevin in the form hereinafter given or to be fixed in like manner shall issue to cause the goods seized to be re-delivered to

Power to take replevin.

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the person replevying the same and such sheriff and deputy shall have power to take and shall require before he grants any such replevin from the person desiring to make replevin a bond with one or more responsible surety or sureties in a competent amount the condition of which bond shall be that the party desiring to make such replevin shall prosecute his suit in a proper court with effect and without delay and make return of the goods and chattels seized if a return thereof be adjudged and such bond may be assigned by such sheriff and sued on in like manner as in like cases in England.

Sheriff to appoint deputies at certain places.

68. The sheriff for the time being of the said colony shall by writing under his hand and seal appoint one or more deputy or deputies in Brisbane for the purpose of making replevin and deliverance of distresses.

Justices may grant replevin in certain cases.

69. In all cases in which any distress shall be made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid it shall be lawful for any justice of the peace to grant a replevin of the goods distrained and for that purpose to take a replevin bond with sufficient sureties.

Provided nevertheless that neither such justice nor the sheriff nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he shall have acted *bonâ fide* and with reasonable care and caution.

Sheriff before deliverance of any distress to take sufficient security as herein mentioned.

70. The said sheriff or deputy or justice of the peace as aforesaid shall before deliverance be made by him of any distresses take from the person or persons to whom such replevin is granted and two sufficient sureties a bond in double the value of the property distrained such value to be ascertained by the oath of one or more credible witness or witnesses and which oath the person granting replevin is hereby authorized to administer conditioned for commencing within one calendar month from the date of such bond and prosecuting with effect and without delay an action for the taking and detaining the property distrained and for returning such property in case a return should be awarded and such sheriff deputy or justice of the peace taking any such bond shall at the request of the avowant or person making cognizance assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness and if the bond so taken and assigned be forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name and the court where such action shall be brought may by a rule or order of the same court give such relief to the parties upon such bond as may be agreeable to justice and reason and such rule shall have the nature and effect of a defeasance to such bond.

Distress Replevin and Ejectment Act of 1867 (Queensland, adopted).

71. Every action of replevin except those over which jurisdiction is expressly given to district courts or small debts courts and courts of petty sessions shall be commenced in the Supreme Court of Queensland by writ of summons in such form as the judges shall from time to time prescribe as hereinafter mentioned and be thenceforward prosecuted and dealt with in like manner as other actions in the said court may be prosecuted and dealt with and the laws and statutes in force in England applicable to actions of replevin shall be in force in this colony and be applied in the administration of justice so far as the same can be applied within this colony.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe.

72. Every plaint in replevin may be in the form or to the effect of the schedule to this Act number three and every precept to replevin may be in the form or to the effect of the schedule to this Act annexed number four and every replevin bond shall be taken in the form or to the effect of the schedule to this Act annexed number five and every assignment of such bond shall be in the form or to the effect of the schedule to this Act annexed number six.

Forms of precept to replevin and of replevin and assignment bonds. Schs. III. to VI.

73. The sheriff and every such deputy as aforesaid and every justice of the peace shall be entitled to demand and receive for the making of every replevin including the taking of the bond thereon a fee of ten shillings and for the making of every such assignment a fee of two shillings and sixpence.

Fees to be charged.

74. The respective district courts and small debts courts established or hereafter to be established and the respective courts of petty sessions established or hereafter to be established in any part of the colony shall and they are hereby authorized and empowered to hear and determine within their respective jurisdictions all actions of replevin relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress shall be or ought to have been made shall not in the case of a district court exceed fifty pounds or in the case of a small debts court or court of petty sessions exceed thirty pounds in amount or value and all proceedings in such action of replevin shall be taken and all such actions shall be tried and determined in the same manner and shall be subject to the same rules and appeal as the law now directs or shall hereafter direct with respect to other actions in the said district courts or small debts courts or courts of petty sessions.

District and small debts courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds.

75. The plaint in actions of replevin in the said district courts small debts courts or courts of petty sessions shall be in the form or to the effect of the schedule to this Act annexed number three.

As to form of plaint in such actions. Schedule III.

Court may award damages or may order replevin bond to be given up.

76. If at the hearing of any such action of replevin before any of the said district courts or small debts courts or courts of petty sessions it shall appear that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said court it shall be lawful for such court to give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress and in case it shall appear that no rent was due at the time of such distress or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint it shall be lawful for such court to direct the replevin bond to be delivered up to the party complaining of the distress and also to give judgment for the plaintiff for such damages as the court may think fit and if necessary to direct that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due and to make an order accordingly.

Court may order goods distrained on to be sold.

77. It shall be lawful for every such district court and small debts court or court of petty sessions on the hearing of any such action of replevin to order that the goods distrained shall be returned to the party who distrained the same and in every such case where the goods distrained shall be actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond and all such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Sections 78-117 repealed by No. 3 of 1914, s. 2 and First Schedule.

* * * * *

RELIEF AGAINST FORFEITURES.

Relief against forfeiture for non-payment of rent. Imp. 23 & 24 Vic. c. 126, s. 1.

118. In case of any ejection for a forfeiture brought for non-payment of rent the court or a judge shall have power upon a rule or summons to give relief in a summary manner but subject to appeal as hereinafter mentioned up to and within the like time after execution executed and subject to the same terms and conditions in all respects as to payment of rent costs and otherwise as in a court of equity and if the lessee his executors administrators or assigns shall upon such proceeding be relieved he and they shall hold the demised lands according to the lease thereof made without any new lease.

Relief against forfeiture for non-insuring. Imp. 17, s. 2. Imp. 22 & 23 Vic. c. 35, s. 4.

119. In the case of any ejection for a forfeiture for breach of covenant or condition to insure against loss or damage by fire the court or a judge shall have power upon a rule or summons to give relief in a summary manner but subject to appeal as hereinafter

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mentioned in all cases in which such relief may now be obtained in a court of equity under the provisions of "*The Equity Act of 1867*"⁽³⁾ and upon such terms as would be imposed in such court.

120. Where such relief shall be granted the court or a judge shall direct a minute thereof to be made by indorsement on the lease or otherwise.

Minute of relief granted.
Imp. 23 & 24
Vic. c. 126, s. 3.

121. Any order made by a judge upon an application for relief under the provisions of this Act shall be subject to an appeal to the court and may be discharged varied or set aside by the court upon such terms as the court shall think fit on application made thereto by any party dissatisfied with such order.

Appeal to the court from order of judge.
Imp. *Ib.* s. 4.

122. No appeal shall be allowed unless notice thereof shall be given in writing to the opposite party or his attorney and to the prothonotary of the Supreme Court within four days after the decision complained of or such further time as may be allowed by the court or a judge.

Notice of appeal.
Imp. *Ib.* s. 7.

123. Notice of appeal shall be a stay of execution provided bail to pay the sum demanded and costs be given in like manner and to the same amount as bail in error within eight days after the decision complained of or before execution delivered to the sheriff.

Bail.
Imp. *Ib.* s. 8.

LEASES.

124. Where any licence to do any act which without such licence would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease heretofore granted or to be hereafter granted shall at any time after the commencement of this Act be given to any lessee or his assigns every such licence shall unless otherwise expressed extend only to the permission actually given or to any specific breach of any proviso or covenant made or to be made or to the actual assignment under lease or other matter thereby specifically authorized to be done but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence) and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorized or made dispensable by such licence in the same manner as if no such licence had been given and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given except in respect of the particular matter authorized to be done.

Restriction on effect of licence to alien.
Imp. 22 & 23
Vic. c. 35, s. 1.

(3) *The Equity Act of 1867* of Queensland has not been expressly adopted as a law of the Territory by any Ordinance of the Territory of Papua.

Restricted
operation of
partial licence.
Imp. 22 & 23
Vic. c. 35, s. 2.

125. When in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without licence and a licence at any time after the commencement of this Act shall be given to one of several lessees or co-owners to assign or underlet his share or interest or to do any other act prohibited to be done without licence or shall be given to any lessee or owner or any one of several lessees or owners to assign or underlet part only of the property or to do any other such act as aforesaid in respect of part only of such property such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interests in the property or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

Apportionment of
conditions of
re-entry in
certain cases.
Imp. 17. s. 3.

126. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned the assignee of each part of the reversion shall in respect of the apportioned rent or other reservation allotted or belonging to him have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction in
effect of waiver.
Imp. 23 & 24
Vic. c. 38, s. 6.

127. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs executors administrators or assigns shall be proved to have taken place after the commencement of this Act in any one particular instance such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate nor be a general waiver of the benefit of any such covenant or condition unless an intention to that effect shall appear.

Attornment of
tenants void.
Imp. 11 Geo. II.
c. 19. s. 11.

128. All and every attornment to a stranger of any tenant of any land within Queensland shall be absolutely null and void to all intents and purposes whatsoever and the possession of his landlord or lessor shall not be deemed or construed to be anywise changed altered or affected by any such attornment

Provided always that nothing in this section contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law or decree or order of a

court of equity or made with the privity and consent of the landlord or lessor or to any mortgagee after the mortgage has become forfeited.

DUTY OF TENANT.

129. Every tenant to whom any writ in ejectment shall be delivered or to whose knowledge it shall come shall forthwith give notice thereof to his landlord or his bailiff or receiver under penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord.
Imp. 15 & 16
Vic. c. 76, s. 209.

EJECTMENT FOR NON-PAYMENT OF RENT.

130. In all cases between landlord and tenant as often as it shall happen that one half-year's rent shall be in arrear and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof such landlord or lessor may without any formal demand or re-entry serve a writ in ejectment for the recovery of the demised premises or in case the same cannot be legally served or no tenant be in actual possession of the premises then such landlord or lessor may affix a copy thereof upon the door of any demised messuage or in case such action in ejectment shall not be for the recovery of any messuage then upon some notorious place of the lands tenements or hereditaments comprised in such writ in ejectment and such affixing shall be deemed legal service thereof which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry and in case of judgment against the defendant for non-appearance if it shall be made appear to the court where the said action is depending by affidavit or be proved upon the trial in case the defendant appears that half a year's rent was due before the said writ was served and that no sufficient distress was to be found on the demised premises countervailing the arrears then due and that the lessor had power to re-enter then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made and in case the lessee or his assignee or other person claiming or deriving under the said lease shall permit and suffer judgment to be had and recovered on such trial in ejectment and execution to be executed thereon without paying the rent and arrears together with full costs and without proceeding for relief in equity within six months after such execution executed then and in such case the said lessee his assignee and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity and the said landlord or lessor shall from thenceforth hold the said demised

Proceedings in ejectment by landlord for non-payment of rent.
Imp. 15 & 16
Vic. c. 76, s. 210.

premises discharged from such lease and if on such ejectment a verdict shall pass for the defendant or the claimant shall be nonsuited therein then in every such case such defendant shall have and recover his costs Provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease or any part thereof who shall not be in possession so as such mortgagee shall and do within six months after such judgment obtained and execution executed pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid and perform all the covenants and agreements which on the part and on behalf of the first lessee are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
Imp. 15 & 16
Vic. c. 78, s. 211.

131. In case the said lessee his assignee or other person claiming any right title or interest in law or equity of in or to the said lease shall within the time aforesaid proceed for relief in equity such person shall not have or continue any injunction against the proceedings at law on such ejectment unless he shall within forty days next after a full and perfect answer shall be made by the claimant in such ejectment bring into court and lodge with the master in equity such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances and also the costs taxed in the said suit there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security subject to the decree of the court and in such case proceedings for relief in equity shall be taken within the time aforesaid and after execution is executed the lessor or landlord shall be accountable only for so much and no more as he shall really and *bonâ fide* without fraud deceit or wilful neglect make of the demised premises from the time of his entering into the actual possession thereof and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease then the said lessee or his assignee before he shall be restored to his possession shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs proceedings to cease.
Imp. 1b. s. 212.

132. If the tenant or his assignee shall at any time before the trial in such ejectment pay or tender to the lessor or landlord his executors or administrators or his or their attorney in that cause or pay into the court all the rent and arrears together with the costs then and in such case all further proceedings on the said ejectment shall cease and be discontinued and if such lessee his executors administrators or assigns shall upon such proceedings as aforesaid be relieved in equity he and they shall have hold and enjoy the demised lands according to the lease thereof made without any new lease.

TENANT HOLDING OVER.

133. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands tenements or hereditaments for any term or number of years certain or from year to year shall have expired or been determined either by the landlord or tenant by regular notice to quit and such tenant or anyone holding or claiming by or under him shall refuse to deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person and the landlord shall thereupon proceed by action of ejectment for the recovery of possession

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Imp. 15 & 16
Vic. c. 76, s. 213.

it shall be lawful for him at the foot of the writ in ejectment to address a notice to such tenant or person requiring him to find such bail if ordered by the court or a judge and for such purposes as are hereinafter next specified

Rule or summons for the tenant to give bail.

and upon the appearance of the party on an affidavit of service of the writ and notice it shall be lawful for the landlord producing the lease or agreement or some counterpart or duplicate thereof and proving the execution of the same by affidavit and upon affidavit that the premises have been actually enjoyed under such lease or agreement and that the interest of the tenant has expired or been determined by regular notice to quit as the case may be and that possession has been lawfully demanded in manner aforesaid to move the court or apply by summons to a judge at chambers for a rule or summons for such tenant or person to show cause within a time to be fixed by the court or judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognition by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action

and it shall be lawful for the court or judge upon cause shown or upon affidavit of the service of the rule or summons in case no cause shall be shown to make the same absolute in the whole or in part and to order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute and in case the party shall neglect or refuse so to do and shall lay no ground to induce the court or judge to enlarge the time for obey-

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

ing the same then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the schedule to this Act annexed marked number fifteen⁽⁴⁾ or to the like effect.

Schedule XV.

On trial of any ejectment between landlord and tenant juries to give damages for mesne profits down to the verdict or to a day specified therein.

Imp. 15 & 16
Vic. c. 76, s. 214.

LANDLORD AGAINST TENANT.

134. Wherever it shall appear on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney hath been served with due notice of trial the judge before whom such cause shall come on to be tried shall whether the defendant shall appear upon such trial or not permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein and the jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises and also as to the amount of the damages to be paid for such mesne profits and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury

Provided always that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found judge shall not stay the execution except by consent or on tenant's finding security.

Imp. 1b. s. 215.

135. In all cases in which such security shall have been given as aforesaid if upon the trial a verdict shall pass for the claimant unless it shall appear to the judge before whom the same shall have been had that the finding of the jury was contrary to the evidence or that the damages given were excessive such judge shall not except by consent make any order to stay judgment or execution except on condition that within four days from the day of the trial the defendant shall actually find security by the recognition of himself and two sufficient sureties in such reasonable sum as the judge shall direct conditioned not to commit any waste or act in the nature of waste or other wilful damage and not to sell or carry off any standing crops hay straw or manure produced or made (if any) upon the premises and which may happen to be

(4) Schedule 15 was repealed by the *Ordinances Revision Ordinance, 1913.*

thereupon from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment or the same be set aside as the case may be.

136. All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner and by and before such persons as the judges shall direct and shall be filed with the prothonotary for which respectively the sum of two shillings and sixpence and no more shall be paid but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof shall actually have been delivered to the landlord.

Recognizances to be taken as other recognizances of bail. Actions on them limited. Imp. 15 & 16 Vic. c. 76, s. 216.

137. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Saving of former remedies. Imp. *ib.* s. 218.

MORTGAGOR AND MORTGAGEE.

138. Where an action of ejectment shall be brought by any mortgagee his heirs executors administrators or assignees for the recovery of the possession of any mortgaged lands tenements or hereditaments and no suit shall be then depending in equity for or touching the foreclosing or redeeming of such mortgaged lands tenements or hereditaments if the person having right to redeem such mortgaged lands tenements or hereditaments and who shall appear and become defendant in such action shall at any time pending such action pay unto such mortgagee or in case of his refusal shall bring into court all the principal moneys and interest due on such mortgage and also all such costs as have been expended in any suit at law or in equity upon such mortgage (such money for principal interest and costs to be ascertained and computed by the court or the proper officer in that behalf) the moneys so paid to such mortgagee or brought into court shall be deemed and taken to be in full satisfaction and discharge of such mortgage and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly and shall and may by rule of the same court compel such mortgagee at the costs and charges of such mortgagor to assign surrender or re-convey such mortgaged lands tenements and hereditaments and such estate and interest as such mortgagee has therein and deliver up all deeds evidences and writings in his custody relating to the title of such mortgaged lands tenements and hereditaments unto such mortgagor who shall have paid or brought such moneys into the court his heirs executors or administrators or to such other person or persons as he or they shall for that purpose nominate or appoint.

In ejectment by mortgagee the mortgagor's rendering the principal interest and costs in court shall be deemed a full satisfaction and the court may compel the mortgagee to re-convey. Imp. *ib.* s. 219.

Not to extend to cases where the right of redemption is controverted or the money due not adjusted.
Imp. 15 & 16
Vic. c. 76, s. 220.

139. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed shall (by writing under his hand or the hand of his attorney agent or solicitor to be delivered before the money shall be brought into court to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage or shall be admitted on the other side or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit or shall be any prejudice to any subsequent mortgage or subsequent encumbrance anything herein contained to the contrary thereof in anywise notwithstanding.

Or to prejudice any subsequent mortgage.

JURISDICTION OF THE COURT.

Jurisdiction of courts and judges.
Imp. *Ib.* s. 221.

140. The Supreme Court and the judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectionment so as to ensure a trial of the title and of actual ouster when necessary only and for all other purposes for which such jurisdiction may at present be exercised and the provisions of all laws and statutes not inconsistent with the provisions of this Act and which may be applicable to the altered mode of proceeding shall remain in force and be applied thereto.

Section 141 repealed by No. 3 of 1914, s. 2 and First Schedule.

* * * * *

PENALTIES.

Application of penalties.

142. All penalties imposed by this Act shall be paid one moiety to Her Majesty her heirs and successors for the public uses of the said colony and in the support of the government thereof and shall be applied in such manner as may be from time to time directed by any Acts of the legislature and the other moiety to the use of the informer or party prosecuting.

POWERS OF THE COURT.

General rules may be made by the judges.
Imp. *Ib.* s. 223.

143. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders⁽⁵⁾ and to prescribe all such forms⁽⁵⁾ for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the

(5) No general rules and orders have been made, and no forms have been prescribed.

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return of any writ or for the doing of anything by this Act prescribed or authorized to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

144. The court or a judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants. Defence by persons not in possession.

COMMENCEMENT AND SHORT TITLE.

145. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Distress Replevin and Ejectment Act of 1867.*"⁽¹⁾ Commencement of Act.
Short title.

SCHEDULES.

NUMBER ONE.

Warrant to Distrain.

I A.B. of do hereby authorize you C.D. of Section 45.
to distrain the goods and chattels in the dwelling-house [or
in and upon the farm land and premises] of E.F. situate at
for £ being the amount of rent due to me for the same on
the day of last[or instant] and to proceed
thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18

A.B.
[or A.B. by his attorney G.H.]

NUMBER TWO.

Inventory.

I have this day [if distress made by a bailiff here add by virtue of the Section 47.
warrant a copy of which is hereunder written] distrained the following goods
and chattels in the dwelling-house [or in and upon the farm land and
premises] of E.F. situate at for £ being the
amount of rent due to me [or if the distress be made by a bailiff to A.B. of
] for the same on the day of
last [or instant].

Dated this day of A.D. 18

A.B. landlord.
[or C.D. bailiff.]

[Enumerate the goods and chattels at full length and if distress be made by a bailiff then insert a copy of the warrant to distrain.]

(1) See footnote (1) printed on p. 2669.

LAND—

NUMBER THREE.

Plaint in Replevin.

Sections 67, 72,
& 75.

A.B. of [*insert place of residence*] complains of C.D. of [*insert place of residence*] for that the said C.D. did on the _____ day of _____ last [*or instant*] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B. that is to say [*here describe them at full length*] for the sum of [*here insert amount distrained for*] which the said C.D. alleged to be due to him for rent.

NUMBER FOUR.

Precept to Replevy.

Sections 67 & 72.

A.B. Esquire sheriff of Queensland [*or deputy specially appointed by the sheriff of Queensland or one of Her Majesty's justices in and for the Colony of Queensland assigned to keep the peace*] To C.D. my bailiff Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels to wit [*specifying them*] and also for making a return thereof if return thereof shall be adjudged therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels which the said G.H. hath taken and unjustly detained as alleged Thereof fail not.

Dated this _____ day of _____ A.D. 18 _____
A.B. sheriff
[*or sheriff's deputy or justice of the peace*].

NUMBER FIVE.

Replevin Bond.

Sections 67, 69,
& 72.

Know all men by these presents that we J.P. of [*place of abode and addition*] C.D. of [*place of abode and addition*] and L.H. of [*place of abode and addition*] are held and firmly bound to A.B. Esquire sheriff of Queensland [*or deputy specially appointed by the sheriff of Queensland or one of Her Majesty's justices in and for the Colony of Queensland assigned to keep the peace*] in the sum of [*insert double the value of the goods and chattels*] of lawful money of Great Britain to be paid to the said A.B. or his certain attorney executors administrators or assigns for which payment to be made we bind ourselves and each of us our respective heirs executors and administrators jointly and severally by these presents.

Dated this _____ day of _____ A.D. 18 _____

Whereas the above A.B. upon the complaint of the above J.P. hath consented to deliver and replevy to the said J.P. the goods and chattels following to wit [*enumerate the whole of the property*] which J.N. of [*place of abode and addition*] hath taken and wrongfully withheld as the said J.P. alleges.

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of Queensland or in some competent district court or small debts court or court of petty sessions and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels and also do make return thereof if return thereof shall be adjudged by law and so defend and save harmless the said A.B. against the said J.N. and all other persons from and against all matters and things concerning the premises then this obligation shall be void otherwise it is to remain in full force.

Signed sealed and delivered } J.P. [L.S.]
in the presence of } C.D. [L.S.]
L.H. [L.S.]

Distress Replevin and Ejectment Act of 1867 (Queensland, adopted).

NUMBER SIX.

Assignment of Bond.

Know all men by these presents that I the within-named A.B. have at the request of the within-named J.N. [the avowant or person making cognizance] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided In witness whereof I have hereunto set my hand and seal this _____ day of _____ 18 .

Signed sealed and delivered } A.B. [L.S]
in the presence of }

* * * * *

Schedule No. 7
repealed by
No. 3 of 1914,
s. 2 and First
Schedule.

NUMBER EIGHT.

Confession.

In the Supreme Court of Queensland.

Ipswich } the _____ day of _____ A.D. 18 .
to wit. } [Date of writ.]

On the day and year above written a writ of Our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [here copy the writ] and C.D. has on the day of _____ appeared by _____ his attorney [or in person] to the said writ and the said C.D. has confessed the said action [or has confessed the said action as to part of the said land that is to say (here state the part)] Therefore it is considered that the said A.B. do recover possession of the land in the said writ mentioned [or of the said part of the said land] with the appurtenances and _____ pounds for costs.

* * * * *

Schedules
Nos. 9-12
repealed by
No. 3 of 1914,
s. 2 and First
Schedule.

NUMBER THIRTEEN.

Discontinuance.

In the Supreme Court of Queensland.

Brisbane } On the _____ day of _____ A.D. 18 .
to wit. } [Date of writ.]

On the day and year above written a writ of Our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [here copy the writ] and C.D. has on the day of _____ appeared by _____ his attorney [or in person] to the said writ and A.B. has discontinued the action Therefore it is considered that the said C.D. be acquitted and that he recover against the said A.B. _____ pounds for his costs of defence.

* * * * *

Schedules
Nos. 14 and 15
repealed by
No. 3 of 1914,
s. 2 and First
Schedule.

LAND—